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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman

JIM IRVIN
Commissioner

WILLIAM A. MUNDELL
Commissioner

JEFF HATCH-MILLER
Commissioner

MIKE GLEASON
Commissioner

IN THE MATTER OF THE APPLICATION
OF ARIZONA PUBLIC SERVICE
COMPANY FOR AN ORDER OR ORDERS
AUTHORIZING IT TO ISSUE, INCUR, OR
ASSUME EVIDENCES OF LONG-TERM
INDEBTEDNESS; TO ACQUIRE A
FINANCIAL INTEREST OR INTERESTS IN
AN AFFILIATE OR AFFILIATES; TO LEND
MONEY TO AN AFFILIATE OR
AFFILIATES; AND TO GUARANTEE THE
OBLIGATIONS OF AN AFFILIATE OR
AFFILIATES

DOCKET NO. E-01345A-02-0707

Arizona Corporation Commission
DOCKETED

JAN 27 2003

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**POST-HEARING OPENING BRIEF OF
ARIZONANS FOR ELECTRIC CHOICE AND COMPETITION**

JANUARY 27, 2003

1 **I. INTRODUCTION**

2 Arizonans for Electric Choice and Competition ("AECC") takes no position on the grant
3 of the Arizona Public Service Company ("APS") financing application. However, AECC is
4 concerned with the attempt by APS to link resolution of the financing difficulties experienced by
5 APS and its affiliates, in light of the Arizona Corporation Commission's ("Commission")
6 "Track A" Order (Decision No. 65154), to a resolution of certain issues included in APS's appeal
7 of that Decision, as well as to issues not previously addressed in the Track A proceedings, such as
8 stranded cost recovery and limitations on transition costs recovery by the execution of the "Track
9 "A" Appeals Issues Principles For Resolution" agreement ("Resolution Agreement").¹ Such an
10 attempt contravenes the provisions of the APS 1999 Settlement Agreement and possibly
11 Arizona's open meeting law. It also requires compliance with the provisions of A.R.S. § 40-252
12 in order to change the terms and conditions of the Settlement Agreement because they are
13 incorporated into Commission Decision No. 61973.

14 The Resolution Agreement between APS and Arizona Corporation Commission Staff
15 ("Staff") requires Commission approval of the APS financing application in order for the
16 agreement to take effect. Although not viewed as a party to the APS Settlement Agreement, Staff
17 nevertheless seeks to legally bind the Commission by agreeing to address portions of that
18 Settlement Agreement which have already been settled and remain intact in the "upcoming APS
19 general rate case."

20 A Commission decision granting the APS financing application – without specifically
21 rejecting certain provisions of the Resolution Agreement will have the effect of: 1) breaking the
22 Commission's reassurance in Decision No. 65154 not to undermine the benefits that parties have
23 bargained for under the APS Settlement Agreement.; 2) amending Decision No. 61973 without
24

25 ¹ The Administrative Law Judge can take administrative notice of the "Track A" Appeals Issues Principles for
26 Resolution" and accompanying memorandum, copies of which are attached hereto as Exhibit "A," since they are filed
in this docket. A reading of the two documents will demonstrate quite clearly that the Principles For Resolution are
very much related to any order to be entered in this proceeding.

1 complying with the provisions of A.R.S. § 40-252; and 3) may constitute "legal action" by
2 settling litigation currently before the courts without proper notice under Arizona's open meeting
3 law.

4 **II. THE RESOLUTION AGREEMENT UNDERMINES THE BENEFITS THAT**
5 **PARTIES BARGAINED FOR UNDER THE APS SETTLEMENT AGREEMENT**

6 Commission Decision No. 65154 specifically left untouched the issues of stranded cost
7 recovery and the appropriate treatment of costs incurred by APS in preparation for divestiture.
8 These APS Settlement Agreement provisions, advanced and negotiated on behalf of both
9 residential and commercial ratepayers, were left intact. Further, Decision No. 65154 assures
10 parties and the public that it was "not the Commission's intent to undermine the benefits that
11 parties have bargained for." Nonetheless, the agreement to revisit these issues in the upcoming
12 APS general rate case embodied in Sections 3 and 4 of the Resolution Agreement undermine the
13 safeguards Arizona ratepayers bargained for in the APS Settlement Agreement.

14 AECC and other parties to the APS Settlement Agreement would be adversely affected by
15 reopening the issues of stranded cost and transition cost recovery for APS. Limiting APS'
16 recovery of stranded costs by \$234 million, and to only two-thirds of certain reasonable transition
17 costs, is a benefit to Arizona's business and residential ratepayers. AECC, the Residential Utility
18 Consumers Office ("RUCO") and other parties negotiated these provisions on behalf of ratepayer
19 interests, and it is inappropriate for APS to unilaterally seek a change in these benefits under the
20 regulatory cloak of the Commission without other parties to the Settlement Agreement
21 involvement. As stated by the RUCO witness:

22 DIAZ CORTEZ (RUCO Witness)

23 Q. (BY MR. CROCKETT) Ms. Diaz, you are aware that RUCO
24 was a signatory to the APS 1999 Settlement Agreement, are you
25 not?

26 A. Yes.

Q. Has there been any contact by APS for purposes of
amending the terms and conditions of that agreement insofar as

1 RUCO is aware of?

2 A. No. And I think, which is something that caused me a little
3 bit of consternation yesterday when I heard, or Friday, excuse me, it
4 seems like yesterday, APS witness Jack Davis had this notion that
5 he sort of envisions that they're honoring certain pieces of the 1999
6 Settlement Agreement and certain of them they're not. And I was
7 quite frankly surprised that the thought that agreement was still
8 intact because it's not my understanding, I mean, I'm not a lawyer,
9 but that you can just pick and choose which terms you're going to
10 take out without getting everybody to sign onto it. So, you know, I
11 see that as one of the really big loose ends that I was referring to
12 before is that, you know, at some point, the parties are going to
13 have to decide whether that agreement is completely off the table or
14 whether they want to sort of renegotiate which terms will stay intact
15 and which won't. But I know it was very troubling to us to hear that
16 testimony that they were unilaterally going to decide which ones
17 were effective and which ones weren't

18 Q. And I would assume RUCO still has an interest in the terms
19 and conditions of that agreement?

20 A. Yes.

21 January 13, 2003 Transcript, pp. 883-885.

22 APS witness Jack Davis justifies the Resolution Agreement and the exclusion of other
23 parties during negotiations with Staff, "because the principles of resolution itself have to do with
24 the appeal of the Track A decisions, and I don't think those parties appealed that decision."
25 January 10, 2003 Transcript, p. 581.

26 The Resolution Agreement dealt with far more than "the Track A decisions." Had the
27 Resolution Agreement dealt only with the Track A decision AECC probably would not be a party
28 to this proceeding. However, paragraphs 3 and 4 of the Resolution Agreement involve stranded
29 cost recovery and limitations of transition cost recovery issues that were not involved in the Track
30 A proceeding and that had been negotiated and settled by the APS Settlement Agreement. Mr.
31 Davis acknowledged that the provisions of paragraphs 3 and 4 were included in the Settlement
32 Agreement.

33 DAVIS (APS Witness):

34 Q. [By Mr. Crockett] But when you look at the

1 provisions in the principles for resolution, Paragraph 2, I think,
2 deals with the transfer of assets, does it not? Paragraph 3 deals with
3 the calculations and the handling of stranded costs, if I remember
4 the document correctly, and Paragraph 4 deals with the recovery of
5 certain transition costs by APS; is that correct?

6 A. Yes

7 Q. And all of those issues were included in the
8 settlement agreement, were they not?

9 A. Yes they were.

10 January 10, 2003 Transcript, p. 691.

11 The 1999 APS Settlement Agreement should not be changed without the agreement of all
12 parties to that settlement.

13 **III. SECTIONS 3 AND 4 OF THE RESOLUTION AGREEMENT SETTLE MATTERS**
14 **OUTSIDE THE SCOPE OF THE TRACK A PROCEEDINGS, REQUIRING**
15 **NOTICE UNDER A.R.S. § 40-252.**

16 Section 1 of the Resolution Agreement states:

17 "Upon issuance of a final Commission Decision no longer
18 subject to appeal approving the APS Financing Application, with
19 appropriate conditions, the APS appeals of the Track A Order shall
20 be limited to consideration of the issues described in the subsequent
21 paragraphs of this Agreement."

22 Sections 2 through 4 outline the issues for consideration, while Section 6 then lists those
23 claims that would be specifically resolved by Commission approval of the APS financing
24 application. However, the Resolution Agreement goes far beyond settling issues in the pending
25 APS appeals. The "consideration of the issues described in subsequent paragraphs of this
26 Agreement" involve matters that were not addressed in the Track A proceedings specifically, the
issues of APS' transition costs and stranded cost recovery under Articles II and III of the 1999
APS Settlement Agreement. Indeed, AECC urges the Administrative Law Judge to take
administrative notice of APS's recognition of this fact, wherein it argues that Decision No. 65154,
"did not address how APS would recover the substantial costs imposed in or resulting from the
Settlement Agreement or already incurred in compliance with the Settlement Agreement and the

1 Retail Electric Competition Rules, or the additional costs it and its affiliates would incur on
2 account of the selective and unilateral revocation of the Settlement Agreement by the
3 Commission.”²

4 The Track A proceeding was tailored to address four specific areas in review of the state’s
5 electric restructuring policies: 1) the transfer of assets and associated market power issues; 2) the
6 APS Code of Conduct; 3) the Commission’s Affiliated Interest Rules; and 4) jurisdictional
7 issues.³ Decision No. 65154 limited modification of Decision No. 61973 (APS Settlement) in the
8 following manner: Tucson Electric Power (“TEP”) and APS were granted waivers of A.A.C.
9 R14-2-1615(A), and the Commission directed both utilities to cancel plans to divest interests in
10 any generating assets (Decision No. 65154 at p.23). Therefore, the only provisions of the APS
11 Settlement that the Commission chose to revisit and modify in Decision No. 65154 were those
12 dealing with divestiture⁴ and competitive procurement.

13 Now, the Resolution Agreement seeks to further modify Decision No. 61973 beyond the
14 narrow scope expressed by the Commission in Decision No. 65154 by revisiting settled issues
15 contained in Sections 3 and 4. As testified to by APS witness Davis:

16 . . . This is just an agreement between ourselves and
17 Commission Staff. And what would happen is we have agreed with
18 Commission Staff we would not seek other damages we believe we
19 incurred by the Track A decision, and the only things remaining
20 that we can bring before this Commission are the items that are in
21 Paragraphs 2, 3, and 4 of the principles of resolution. All other
22 items in our claim in the appeal of the Track A decision, are in the
23 Track A decision but we set aside.

24 January 10, 2003 Transcript, p. 696.

25 ² APS Appeal of Decision No. 65154, Complaint at p. 4.

26 ³ May 2, 2002 Procedural Order in consolidated dockets.

⁴ Decision No. 65154 states that, “Accordingly, we will modify Decision Nos. 61973 and 62103 to stay the asset transfer provisions as outlined above.” (p. 23). The only issue addressed in the Track A order on appeal, which is resolved in Section 2 of the Principles for Resolution, is divestiture.

1 It is well recognized that any further modification of Decision No. 61973⁵ or future
2 modification of Decision No. 65154 requires notice and an opportunity to be heard pursuant to
3 A.R.S. § 40-252, not only to the corporation affected, but all affected persons. Gibbons
4 v. Arizona Corp. Commission, (1964) 95 Ariz. 343, 346, 390 P.2d 582, 585. Having expressly
5 not considered the issues of stranded cost and transition cost recovery for APS in Decision
6 No. 65154, the provisions of the Resolution Agreement covering these two issues should not be
7 allowed to become effective by the entry of the financing order.

8 APS and Staff may argue that AECC's procedural argument in this regard is not ripe, and
9 that requisite notice under A.R.S. §40-252 can be provided to all affected persons prior to the
10 commencement of the APS rate case. However, the Resolution Agreement makes conclusive the
11 fact that the issues of stranded cost and transition cost recovery *shall* be addressed within the APS
12 rate case, thereby constructively amending and altering the provisions of Decision Nos. 61973
13 and 65154 which relate to the APS Settlement.

14 **IV. ONLY THE COMMISSION CAN SETTLE THE SCOPE OF PROCEEDINGS**
15 **BEFORE A COURT OF LAW.**

16 A.R.S. § 38-431.3 defines "legal action" as "a collective decision, commitment or promise
17 made by a public body pursuant to the constitution, the public body's charter, bylaws or specified
18 scope of appointment and the laws of this state." A decision to settle certain issues currently
19 before the Arizona courts as a result of APS' appeal of Decision No. 65154 cannot be made by
20 Commission staff; rather, it constitutes "legal action" which requires a public vote of the
21 Commissioners. Nonetheless, the Resolution Agreement, among other things, attempts to resolve
22 issues addressed in APS' appeal of Decision No. 65154. The opening paragraph of the
23 Resolution states:

24 _____
25 ⁵ Even if the issues of APS' stranded cost and transition cost recovery were within the scope of the Track A
26 proceedings, a final determination was made by the Commission in Decision No. 65154 which left intact the
provisions of the APS Settlement Agreement relating to stranded cost and transition cost recovery. Thus, notice
under A.R.S. § 40-252 would still be required to modify the Track A order.

1 In conjunction with resolution of Docket No. E-01345A-02-0707
2 (the 'APS Financing Application'), Commission Staff and APS
3 (hereinafter sometimes referred to as 'the Parties') *agree to limit the
scope and elements of the pending APS appeals* of the
Commission's Decision No. 65154 (the 'Track A Order').

4 Staff cannot agree to limit the scope and elements of the pending APS appeals of
5 Commission Decision No. 65154, since it is not a party to either appeal at Superior Court or the
6 Court of Appeals. The Arizona Corporation Commission is the named defendant, and any
7 decision to limit the scope of the appeals on judicial review through settlement must be made by
8 the public body through "legal action" under Arizona's open meeting laws. This requires notice,
9 open deliberations and a public vote. In Johnson v. Tempe Elementary School Dist. No. 3
10 Governing Bd. 199 Ariz. 567, 20 P.3d 1148 (Ariz. App. Div. 1 2000).

11 At first glance, the Resolution Agreement does not appear to bind the Commission, but
12 simply acts as an agreement between APS and Staff to defer certain matters until the APS general
13 rate case. In return, the Commission settles all remaining issues on appeal enumerated under
14 Section 6 of the Resolution. However, it is a Commission decision, one granting APS's financing
15 application, that triggers the agreement to limit the scope of APS's Track A appeal. Thus, a final
16 Commission decision granting the financing application would also have the operative effect of
17 settling certain court claims against the Commission. Without proper notice under A.R.S. § 38-
18 431.02, such "legal action" would constitute a violation of Arizona's open meeting laws.

19 V. CONCLUSION

20 AECC respectfully submits that there is a legal nexus between the Principles for
21 Resolution and Commission approval of APS's financing application. AECC urges the
22 Commission to protect the ratepayer benefits contained in the 1999 APS Settlement Agreement
23 by expressly rejecting those provisions of the Resolution Agreement that relate to stranded cost
24 and transition cost recovery.

1 RESPECTFULLY SUBMITTED this 27th day of January, 2003.

2 FENNEMORE CRAIG, P.C.

3
4 By 

5 C. Webb Crockett
6 3003 North Central Avenue, Suite 2600
7 Phoenix, Arizona 85012-2913
8 Attorney for Arizonans for Electric Choice
9 and Competition

9 ORIGINAL and 13 copies of the
10 foregoing hand-delivered for
11 filing this 27th day of
12 January, 2003, to:

12 Docket Control
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington
15 Phoenix, Arizona 85007

14 COPY of the foregoing was
15 hand-delivered this 27th day of
16 January, 2003, to:

16 Christopher C. Kempley, Chief Counsel
17 ARIZONA CORPORATION COMMISSION
18 Legal Division
19 1200 West Washington
20 Phoenix, Arizona 85007

19 Ernest G. Johnson
20 Director, Utilities Division
21 ARIZONA CORPORATION COMMISSION
22 1200 West Washington
23 Phoenix, Arizona 85007

22 Lyn Farmer, Chief Administrative Law Judge
23 Hearing Division
24 ARIZONA CORPORATION COMMISSION
25 1200 West Washington
26 Phoenix, Arizona 85007

By: 

1 COPY of the foregoing emailed
2 this 27th day of January, 2003, to the service
3 list in this matter.

4 By: 

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MEMORANDUM

2002 DEC 13 P 4 18

To: Chairman William Mundell
Commissioner Jim Irvin
Commissioner Marc Spitzer
Arizona Corporation Commission
AZ CORP COMMISSION
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From: Ernest Johnson
Utilities Director
DEC 13 2002
E-00000A-02-0051
E-01345A-01-0822
E-00000A-01-0630
E-01933A-02-0069

Date: December 13, 2002
DOCKETED
CAP

RE: Docket No. E-01345A-02-0707
Arizona Public Service Company Financing Application

On September 16, 2002, Arizona Public Service Company ("APS" or "Company") submitted its Application in this docket. The Application specifically seeks Commission order(s) authorizing APS to assume, issue, or incur up to \$500,000,000 in aggregate amount of Recapitalization Debt in connection with the refinancing or recapitalization of its affiliates Pinnacle West Capital Corporation ("PWCC") and Pinnacle West Energy Corporation ("PWEC") in financing certain generation assets owned by PWEC. Other orders were requested, all of which in total would facilitate the refinancing of the assets owned by PWEC with debt attributable to APS.

APS indicated that the Application was filed to address certain "serious and unique financial harm faced by APS, PWEC and PWCC as a result of the Commission's "reversal of course" on the issue of APS generation asset divestiture." The Application indicated that it constituted an "important and necessary first step" in the process of remedying the alleged financial harms caused to APS, PWCC and PWEC by Commission Decision No. 65154. In footnote 2 to the Application, at page 2, the Company indicates its intent to seek reconsideration of Decision No. 65154 (the "Track A Order").

Subsequently, the Company did, of course, submit its Application for Rehearing of the Track A Order. In its Application for Rehearing, APS alleged that, as a result of the Track A Order, it has suffered a litany of "damages". The list of "damages" ranged from alleged losses associated with the write-off of so-called "stranded assets", to alleged losses associated with voluntary rate reductions, alleged business damages from increased financing costs, alleged lost opportunity costs, and including a general statement of "other damages". The Application for Rehearing was denied by the Commission. APS has subsequently filed actions amounting to an appeal of the Track A Order.

Now APS is before the Commission with its Application for Financing, which, if granted, would cause APS to become at least a guarantor for up to \$500,000,000 of debt to finance assets owned by its affiliate PWEC. In addition, APS currently has pending before the Commission an Application for Approval of

certain adjustor mechanisms. APS also intends to submit a base rate case at the earliest date that is permissible under Commission Decision No. 61973. Meanwhile, of course, the Track B proceeding continues before the Commission.

Staff has, of course, prepared testimony to present in the Financing Proceeding. This Memorandum is not intended to address any of the substantive issues that are directly raised by the Financing matter. Rather, this Memorandum is intended to bring to your attention the fact that those issues are inextricably interwoven with issues from the APS appeal of Track A that are still pending before the Courts. I have been concerned that resolving the Financing Application in the absence of any final resolution of the Track A appeal would leave APS ratepayers subject to the risks of litigation despite the fact that such an order would mitigate the risks for the Company.

Because of the lack of symmetry that I believe would result from resolving the Financing Application without due consideration of the Track A appeal, Staff has engaged in a dialogue with APS. From my perspective that dialogue has been intended as an attempt to arrive at an agreement which would align the risks to customers from the continued existence of the Track A appeal with the risk mitigation to APS from the Commission's resolution of the APS Financing Application.

Staff's dialogue with APS has been fruitful. APS recognized that the Financing Application is a step in the ongoing process of the Commission's refinement of its electric restructuring efforts. As a result, Staff and APS have entered into a document entitled "TRACK "A" APPEALS ISSUES PRINCIPLES FOR RESOLUTION" (the "Principles for Resolution"). A copy of the document is attached to this Memorandum.

The Principles for Resolution provides for agreed-upon treatment of the issues in APS's Track A appeal in a manner which permits Staff to conduct the Financing Application matter without any additional reference to Track A. Specifically, the Principles for Resolution limits the issues which APS may pursue with respect to Track A and provides that those issues shall be pursued before the Commission, at least in the first instance, before seeking court action. Under the Principles for Resolution, the remedies which APS may seek are limited to regulatory actions.

With the limitations from the Principles of Resolution in place, Staff is comfortable proceeding in the Financing matter without further concern regarding Track A. Staff has submitted testimony in the APS Financing Application. In light of the resolution of our concerns over Track A appeals, Staff believes that the public interest will be served if the Commission adopts the recommendations contained in our testimony in the Financing matter as filed. Nothing in the Principles of Resolution limits the Commission's ability to consider and evaluate the APS financing application or to resolve that matter as it deems appropriate.

TRACK "A" APPEALS ISSUES PRINCIPLES FOR RESOLUTION

In conjunction with resolution of Docket No. E-01345A-02-0707 (the "APS Financing Application"), Commission Staff and APS (hereinafter sometimes referred to as "the Parties") agree to limit the scope and elements of the pending APS appeals of the Commission's Decision No. 65154 (the "Track A Order"). This agreement is entered into in recognition that the proposed APS Financing is an "extraordinary event" in that the Utility is seeking approval to secure financing of and for non-utility assets, owned and operated by a non-utility affiliate.

The Parties acknowledge that the Track A Order appropriately resolves issues that posed a risk to Arizona consumers. Specifically, the Order protects customers from the volatile wholesale market.

The Parties acknowledge that the Track A Order prohibits the transfer of certain APS assets to its non-utility affiliate, which transfer had been contemplated by earlier Commission decisions.

The Parties further acknowledge that the Track A Order constitutes a change in Commission restructuring policy with respect to the divestiture of utility generating assets, which change can only be seen as a partial readjustment of the regulatory treatment of generating assets, under the 1999 Settlement.

The Parties acknowledge that the Track A Order does not resolve all of the regulatory issues that remain as a result of the Track A Order's amendment to Decision No. 61973, the Commission Order approving the APS Settlement.

The Parties recognize that the issues raised by the APS appeals of the Track A Order are partially resolved to APS's satisfaction by resolution of the APS Financing Application.

The Parties agree that it is appropriate to dismiss certain claims and to limit the scope of others in APS' appeal of the Track A Order upon successful resolution of the APS Financing Application.

The Parties further recognize that all remaining elements and claims under the APS appeals of the Track A Order are appropriately the subject of certain regulatory proceedings before the Commission, all of which are presently contemplated by the Parties.

Accordingly, the Parties agree to execute a Stipulation, or other binding Agreement with the following provisions:

1. Upon the issuance of a final Commission Decision no longer subject to appeal approving the APS Financing Application, with appropriate conditions, the APS

appeals of the Track A Order shall be limited to consideration of the issues described in the subsequent paragraphs of this Agreement. The Parties agree that those issues shall each be presented to the Commission for consideration in the appropriate regulatory proceeding, as described herein, prior to final resolution by a court.

2. The Parties agree that it is appropriate for the Commission to consider what generating assets should be included in APS's rate base, specifically including the question of whether Redhawk 1 and 2, West Phoenix Combined Cycle 4 and 5, and Saguaro Combustion Turbine 3, should be included in rate base. This issue should be considered in the upcoming APS general rate case, anticipated to be filed before June 30, 2003. The Parties expressly recognize that the Commission will consider prudence, used and usefulness, and reasonable operating costs in the course of considering rate base treatment for the assets. The rate case will also require consideration of the appropriate rates to be adopted to compensate APS for its reasonable operating expenses and a fair return on the fair value of its property devoted to public service.

3. The Parties agree that it is appropriate for the Commission to consider the appropriate treatment and amounts of so-called "stranded investment". Specifically, APS should have the opportunity to present evidence and argument to support a differing regulatory treatment for the "234 million write-off". The issues surrounding the \$234 million write-off should be presented to the Commission in the upcoming APS general rate case, along with any other relevant issues or adjustments associated with the appropriate treatment and amounts of so-called "stranded investment".

4. The Parties agree that it is appropriate for the Commission to consider the appropriate treatment of costs incurred by APS in preparation for the previously anticipated transfer of generation assets to a non-utility affiliate. Specifically, APS should have the opportunity to present evidence and argument to support a specific dollar amount and recovery percentage for such costs. Issues surrounding the amount and recovery of so-called "transition costs" should be presented in the upcoming rate case.

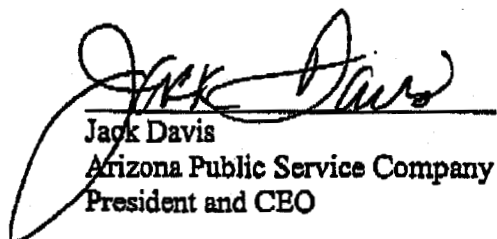
5. All issues and claims which are or may be construed as being raised by the APS Track A appeals shall be deemed to be resolved, other than as expressly described in Paragraphs 2 through 4 above. The issues described in Paragraphs 2 through 4 above shall be considered by the Commission in the described regulatory proceedings prior to final resolution in any judicial proceeding. No Party waives their right to judicial review of those Commission decisions by this agreement. Notwithstanding the provisions of the succeeding paragraph, APS will retain all of its causes of action with regard to the matters in paragraphs 2 through 4. Any relief that APS seeks in the aforementioned causes of action shall be limited to authorizing the specific regulatory treatment sought by APS in connection with paragraphs 2 through 4.

6. Claims which are specifically resolved include the following:

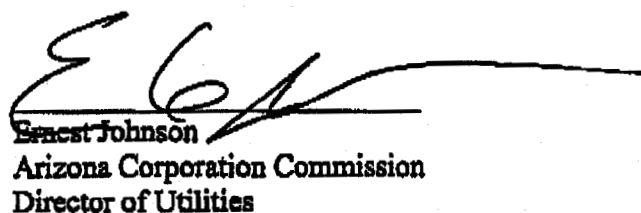
- a) The allegation that APS is entitled to recovery of allegedly lost revenues associated with rate reductions;
- b) The allegation that APS is entitled to recover alleged losses associated with legal claims that APS previously dismissed;
- c) Alleged business damages resulting from increased financing costs and other costs incurred by Pinnacle West Capital Corporation ("PWCC") and Pinnacle West Energy Corporation ("PWEC"), as well as any alleged damages associated with possible ratings downgrades of APS alleged to occur or have occurred as a result of Commission action.
- d) Alleged loss of opportunities relating to supposed reliance on the Settlement Agreement Order, including but not limited to foregone power sales by PWEC, as well as alleged damages associated with loss of opportunity to pursue the APS appeals of the Electric Competition Rules.
- e) Alleged loss of the opportunity to recover higher sales costs due to the rate moratorium, as well as any allegations of damages caused by increased costs incurred to maintain reliability during 2000 and 2001;
- f) Any other miscellaneous alleged losses.
- g) Alleged violations of A.R.S. § 40-252;
- h) Alleged violations of the Arizona Procedures Act;
- i) Alleged controversies that might support a declaratory judgment;
- j) An alleged lack of substantial evidence to support the Decision and alleged abuses of discretion;
- k) Alleged violations of due process;
- l) Alleged violations of equal protection;
- m) Alleged Supremacy clause violations;
- n) Alleged Contracts Clause violations;
- o) Alleged takings of private property claims;
- p) Alleged breach of contract claims.

7. This agreement is not intended to limit the scope and purpose of the upcoming general rate case, or the adjustment mechanism proceeding, except as explicitly described herein.

AGREED IN PRINCIPLE:



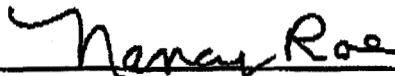
Jack Davis
Arizona Public Service Company
President and CEO



Ernest Johnson
Arizona Corporation Commission
Director of Utilities

CERTIFICATE OF MAILING

The undersigned hereby certifies that the foregoing was emailed to all parties of record this 13th day of December, 2002, in Dockets E-01345A-02-0707 and E-00000A-02-0051.



Nancy Roe

EXHIBIT A